

STATE OF MICHIGAN
COURT OF APPEALS

PHILLIP I. VENABLE,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

FOR PUBLICATION

October 22, 2002

9:05 a.m.

No. 219037

Genesee Circuit Court

LC No. 97-059552 CL

ON REMAND

Updated Copy

January 17, 2003

Before: O'Connell, P.J., and Fitzgerald and Wilder, JJ.

WILDER, J. (*concurring*).

After review of the record and our prior opinion, I would conclude that in affirming summary disposition in favor of defendant, reliance on *Allen v Comprehensive Health Services*, 222 Mich App 426; 564 NW2d 914 (1997), was not required. In our prior opinion, we concluded that plaintiff failed to demonstrate that he was situated similarly to the other sixth-level supervisors that plaintiff claimed were not discharged for similar conduct. Plaintiff's failure to show he was situated similarly to other employees who were younger or of a different gender or race, and whom plaintiff claims were treated differently than he was, prevents plaintiff from establishing a prima facie case of disparate treatment. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 181; 579 NW2d 906 (1998), citing *Betty v Brooks & Perkins*, 446 Mich 270, 281; 521 NW2d 518 (1994).

Accordingly, because plaintiff is unable to establish a prima facie case of age, race, or gender discrimination under a disparate treatment theory, I conclude that while we appropriately affirmed summary disposition in favor of defendant, it was not necessary for this Court to address the application of *Allen* to the facts in this case. *People v Graves*, 458 Mich 476, 479-480, n 2; 581 NW2d 229 (1998).

/s/ Kurtis T. Wilder